

106TH CONGRESS  
2D SESSION

# S. 2766

To amend title XVIII of the Social Security Act with respect to payments made under the prospective payment system for home health services furnished under the medicare program.

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## IN THE SENATE OF THE UNITED STATES

JUNE 22, 2000

Mr. KERRY (for himself and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act with respect to payments made under the prospective payment system for home health services furnished under the medicare program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Equal Access to Medi-  
5       care Home Health Care Act of 2000”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) Over 30,000,000 beneficiaries under the  
2        medicare program under title XVIII of the Social  
3        Security Act rely on providers of home health serv-  
4        ices to provide them with cost-effective, high quality  
5        home health care.

6           (2) The medicare home health benefit enables  
7        many medicare beneficiaries to remain at home and  
8        to live with dignity and independence despite serious  
9        health conditions.

10          (3) The medicare home health benefit helps al-  
11        leviate the burden of medicare beneficiaries on hos-  
12        pitals and skilled nursing facilities, where services  
13        provided to medicare beneficiaries are more expen-  
14        sive.

15          (4) The amendments made by the Balanced  
16        Budget Act of 1997 to title XVIII of the Social Se-  
17        curity Act were originally projected to cut  
18        \$16,100,000,000 from the medicare home health  
19        benefit between fiscal years 1998 and 2002.

20          (5) The Congressional Budget Office recently  
21        projected that those amendments made by the Bal-  
22        anced Budget Act of 1997 will actually cut  
23        \$69,400,000,000 from the medicare home health  
24        benefit between fiscal years 1998 and 2002.

1           (6) The recent projections by the Congressional  
2       Budget Office represent more than 4 times the  
3       amount of the reduction in the medicare home  
4       health benefit originally projected to take effect as  
5       a result of the amendments made by the Balanced  
6       Budget Act of 1997.

7           (7) The failure of the Health Care Financing  
8       Administration to disburse payments under the in-  
9       terim payment system established by the Balanced  
10      Budget Act of 1997 under section 1861(v)(1)(L) of  
11      the Social Security Act in a timely manner has re-  
12      sulted in medicare overpayments to thousands of  
13      providers of home health services, leaving many of  
14      these providers on precarious financial footing.

15          (8) Access to care, particularly for high-cost  
16      and long-term patients, has become a growing prob-  
17      lem because the amount of payment for these types  
18      of patients under the current interim payment sys-  
19      tem is insufficient.

20          (9) Under the proposed regulation imple-  
21      menting the new prospective payment system, 50  
22      percent of the prospective payment amount will be  
23      paid upon receipt and processing of the providers  
24      initial claim for reimbursement and 50 percent of

1       that amount will be delayed until the final claim is  
2       processed at the end of the 60-day episode period.

3           (10) Medicare beneficiaries incur most home  
4       health care expenses during the first 30 days of a  
5       60-day episode period and providers of home health  
6       services do not have large cash reserves to support  
7       delayed payment for those services under the medi-  
8       care program.

9           (11) It is essential that the Administrator of  
10      the Health Care Financing Administration ensure  
11      that the initial payment to providers of home health  
12      services during a 60-day episode period of home  
13      health care provided under the medicare home  
14      health benefit provides a steady cash flow for those  
15      providers so that medicare beneficiaries may con-  
16      tinue to receive necessary home health services.

17          (12) Studies by the Medicare Payment Advisory  
18      Commission established under section 1805 of the  
19      Social Security Act have indicated that certain popu-  
20      lations of medicare beneficiaries risk not receiving  
21      necessary home health services because of the sys-  
22      temic changes made by the Balanced Budget Act of  
23      1997.

24          (13) Because the aggregate amount of payment  
25      made for all home health services during the first

1 year in which payment will be made for those serv-  
 2 ices under the prospective payment system is limited  
 3 to the amount that would have been paid in such  
 4 year for those services under the interim payment  
 5 system, there is an enormous risk that this limited  
 6 amount will be insufficient, resulting in a perpetua-  
 7 tion of the current crisis under the interim payment  
 8 system for home health services.

9 **SEC. 3. ELIMINATION OF 15 PERCENT REDUCTION IN PAY-**  
 10 **MENT RATES UNDER THE MEDICARE PRO-**  
 11 **SPECTIVE PAYMENT SYSTEM FOR HOME**  
 12 **HEALTH SERVICES.**

13 (a) IN GENERAL.—Section 1895(b)(3)(A) of the So-  
 14 cial Security Act (42 U.S.C. 1395fff(b)(3)(A)), as amend-  
 15 ed by sections 302(b) and 303(f) of the Medicare, Med-  
 16 icaid, and SCHIP Balanced Budget Refinement Act of  
 17 1999 (113 Stat. 1501A–359, 361), as enacted into law  
 18 by section 1000(a)(6) of Public Law 106–113, is amended  
 19 to read as follows:

20 “(A) INITIAL BASIS.—Under such system  
 21 the Secretary shall provide for computation of  
 22 a standard prospective payment amount (or  
 23 amounts). Such amount (or amounts) shall ini-  
 24 tially be based on the most current audited cost  
 25 report data available to the Secretary and shall

1           be computed in a manner so that the total  
 2           amounts payable under the system for the 12-  
 3           month period beginning on the date the Sec-  
 4           retary implements the system shall be equal to  
 5           the total amount that would have been made  
 6           if the system had not been in effect and if sec-  
 7           tion 1861(v)(1)(L)(ix) had not been enacted.  
 8           Each such amount shall be standardized in a  
 9           manner that eliminates the effect of variations  
 10          in relative case mix and area wage adjustments  
 11          among different home health agencies in a  
 12          budget neutral manner consistent with the case  
 13          mix and wage level adjustments provided under  
 14          paragraph (4)(A). Under the system, the Sec-  
 15          retary may recognize regional differences or dif-  
 16          ferences based upon whether or not the services  
 17          or agency are in an urbanized area.”.

18          (b) EFFECTIVE DATE.—The amendment made by  
 19          subsection (a) shall take effect as if included in the enact-  
 20          ment of the Medicare, Medicaid, and SCHIP Balanced  
 21          Budget Refinement Act of 1999 (Public Law 106–113).

22      **SEC. 4. OVERPAYMENTS.**

23          (a) 36-MONTH REPAYMENT PERIOD.—In the case of  
 24          an overpayment by the Secretary of Health and Human  
 25          Services to a home health agency for home health services

1 furnished during a cost reporting period beginning on or  
 2 after October 1, 1997, as a result of payment limitations  
 3 provided for under clause (v), (vi), or (viii) of section  
 4 1861(v)(1)(L) of the Social Security Act (42 U.S.C.  
 5 1395x(v)(1)(L)), the home health agency may elect to  
 6 repay the amount of such overpayment over a 36-month  
 7 period beginning on the date of notification of such over-  
 8 payment.

9 (b) INTEREST ON OVERPAYMENT AMOUNTS.—

10 (1) 36-MONTH GRACE PERIOD.—

11 (A) IN GENERAL.—In the case of an agen-  
 12 cy that makes an election under subsection (a),  
 13 no interest shall accrue on the outstanding bal-  
 14 ance of the amount of overpayment during such  
 15 36-month period.

16 (B) OVERDUE BALANCES.—In the case of  
 17 such an agency, interest shall accrue on any  
 18 outstanding balance of the amount of overpay-  
 19 ment after termination of such 36-month pe-  
 20 riod. Interest shall accrue under this subpara-  
 21 graph at the rate of interest charged by banks  
 22 for loans to their most favored commercial cus-  
 23 tomers, as published in the Wall Street Journal  
 24 on the Friday immediately following the date of  
 25 the enactment of this Act.

1           (2) OTHER AGENCIES.—In the case of an agen-  
 2           cy described in subsection (a) that does not make an  
 3           election under subsection (a), interest shall accrue  
 4           on the outstanding balance of the amount of over-  
 5           payment at the rate described in the second sentence  
 6           of paragraph (1)(B).

7           (c) TERMINATION.—No election under subsection (a)  
 8           may be made for cost reporting periods, or portions of cost  
 9           reporting periods, beginning on or after the date of the  
 10          implementation of the prospective payment system for  
 11          home health services under section 1895 of the Social Se-  
 12          curity Act (42 U.S.C. 1395fff).

13          (d) EFFECTIVE DATE.—The provisions of subsection  
 14          (a) shall take effect as if included in the enactment of the  
 15          Balanced Budget Act of 1997.

16   **SEC. 5. ADDITIONAL PAYMENTS UNDER THE PROSPECTIVE**  
 17                   **PAYMENT SYSTEM FOR SERVICES FUR-**  
 18                   **NISHED IN RURAL AREAS AND SECURITY**  
 19                   **SERVICES.**

20          (a) INCREASE IN PAYMENT RATES FOR RURAL  
 21          AGENCIES.—Section 1895(b) of the Social Security Act  
 22          (42 U.S.C. 1395fff(b)) is amended by adding at the end  
 23          the following new paragraph:

24                   “(7) ADDITIONAL PAYMENT AMOUNT FOR  
 25                   SERVICES FURNISHED IN RURAL AREAS.—In the



1 case of home health services furnished in a rural  
 2 area (as defined in section 1886(d)(2)(D)), the Sec-  
 3 retary shall provide for an addition or adjustment to  
 4 the payment amount otherwise made under this sec-  
 5 tion for services furnished in a rural area in an  
 6 amount equal to 10 percent of the amount otherwise  
 7 determined under this subsection.”.

8 (b) ADDITIONAL PAYMENT FOR SECURITY SERV-  
 9 ICES.—Section 1895(b) of such Act (42 U.S.C.  
 10 1395fff(b)(3)), as amended by subsection (a), is further  
 11 amended by adding at the end the following paragraph:

12 “(8) ADDITIONAL PAYMENT FOR SECURITY  
 13 SERVICES.—The Secretary shall provide for an addi-  
 14 tion or adjustment to the payment amount otherwise  
 15 made under this section for the reasonable cost (as  
 16 defined in section 1861(v)(1)(A)) of furnishing pro-  
 17 tective services to individuals furnishing home health  
 18 services under this title in areas where such individ-  
 19 uals are at risk of physical harm, as determined by  
 20 the Secretary.”.

21 (c) WAIVING BUDGET NEUTRALITY.—Section  
 22 1895(b)(3) of such Act (42 U.S.C. 1395fff(b)(3)) is  
 23 amended by adding at the end the following new subpara-  
 24 graph:

1           “(D) NO ADJUSTMENT FOR ADDITIONAL  
 2           PAYMENTS FOR RURAL SERVICES AND SECUR-  
 3           RITY SERVICES.—The Secretary shall not re-  
 4           duce the standard prospective payment amount  
 5           (or amounts) under this paragraph applicable  
 6           to home health services furnished during a pe-  
 7           riod to offset the increase in payments resulting  
 8           from the application of paragraph (7) (relating  
 9           to services furnished in rural areas) and para-  
 10          graph (8) (relating to costs of security serv-  
 11          ices).”.

12          (d) EFFECTIVE DATE.—The amendments made by  
 13          this section shall take effect on the date that is 270 days  
 14          after the date of the enactment of this Act.

15   **SEC. 6. RULE OF CONSTRUCTION RELATING TO**  
 16           **TELEHOMEHEALTH SERVICES.**

17          (a) IN GENERAL.—Section 1895(b) of such Act (42  
 18          U.S.C. 1395fff(b)(3)), as amended by section 3, is further  
 19          amended by adding at the end the following paragraph:

20           “(9) RULE OF CONSTRUCTION RELATING TO  
 21          TELEHOMEHEALTH SERVICES.—

22           “(A) IN GENERAL.—Nothing in this sec-  
 23          tion, or in section 4206(a) of the Balanced  
 24          Budget Act of 1997 (42 U.S.C. 1395l note),  
 25          shall be construed as preventing a home health

1 agency receiving payment under this section  
2 from furnishing a home health service via a  
3 telecommunications system.

4 “(B) LIMITATION.—The Secretary shall  
5 not consider a home health service provided in  
6 the manner described in subparagraph (A) to  
7 be a home health visit for purposes of—

8 “(i) determining the amount of pay-  
9 ment to be made under this section; or

10 “(ii) any requirement relating to the  
11 certification of a physician required under  
12 section 1814(a)(2)(C).”.

13 (b) REPORT.—Not later than one year after the date  
14 of the enactment of this Act, the Secretary of Health and  
15 Human Services shall submit to Congress a report con-  
16 taining the recommendations of the Secretary with respect  
17 to the feasibility and advisability of including home health  
18 services furnished by telecommunications systems as a  
19 home health service for purposes of—

20 (1) payment for such services under section  
21 1895 of the Social Security Act (42 U.S.C. 1395fff),  
22 and

23 (2) requirements with respect to physician cer-  
24 tification of the need for home health services under

1       section 1814(a)(2)(C) of such Act (42 U.S.C.  
2       1395f(a)(2)(C)).

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